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CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re New Media Group LLC

Serial No. 75/779,128

Morris I. Pollack, Esq. for New Media Group LLC.

Linda E. Blohm, Trademark Examining Attorney, Law Office 110
(Chris A.F. Pedersen, Managing Attorney).

Before Hanak, Walters and Bottorff, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

New Media Group LLC has filed an application to
register the mark GOSKINEWENGLAND.COM on the Principal
Register for "providing a website on a global computer
network featuring information regarding skiing and
snowboarding in New England; and prices and discounts for

skiing and snowboarding equipment, trail maps, dining and entertainment."¹

The Trademark Examining Attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark GOSKI, previously registered for "providing information regarding travel to and from mountain resorts," in International Class 39, and "providing information regarding mountain resorts, entertainment activities, meteorological conditions, reviews of products and services concerning mountain sport activities, and food, restaurant and lodging choices," in International Class 42,² that, if used on or in connection with applicant's services, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours and*

¹ Serial No. 75/779,128, in International Class 41, filed August 19, 1999, based on use in commerce, alleging a date of first use and use in commerce as of February 1999.

² Registration No. 2,244,426 issued May 11, 1999, to Eric Kallgren.

Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

The Examining Attorney contends that applicant's mark is substantially similar to the registered mark because it incorporates the registered mark in its entirety, GOSKI, and merely adds "the geographically descriptive designation, New England, and the Top Level Domain Indicator (TLD), .com"; and that GOSKI has the same connotation in both marks, namely, that it encourages a potential consumer to schedule a ski trip. With respect to the services, the Examining Attorney contends that both applicant's identified services and the services identified in the registration involve providing information that pertains to skiing; that, while applicant's services are limited to providing information via the Internet, the services recited in the registration are not limited and, thus, encompass services provided via the Internet; and that the content of the information

provided by both applicant and registrant is related and, in fact, is overlapping.

Applicant contends that the marks are different when considered in their entireties; and that "GOSKI is short and includes only two syllables[,] while applicant's mark is quite long and includes seven syllables and therefore the respective marks do not present the same appearance or sound." Applicant states the following:

The geographical designation [New England] most surely does distinguish applicant's mark from the cited mark. The connotation of GOSKI is only to go to ski and does not direct the marketplace as to a specific part of the world within which they might wish to enjoy skiing. The ".COM" does, in fact, add source-identifying significance to applicant's mark.

...
The services provided by applicant's mark are significantly different from those of the cited registration in that applicant's services direct the using public to a specific location to enjoy skiing activities; while the services provided by the cited registration leave the user in the quandary of "where in the world?"
[Brief, p. 2-3.]

We consider, first, the services involved in this case. In this regard, we note that the question of likelihood of confusion must be determined based on an analysis of the services recited in applicant's application vis-à-vis the services recited in the registration, rather than what the evidence shows the services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v.*

Houston Computer Services, Inc., 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991).

Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

Applicant's identified services are providing an Internet website "featuring information regarding skiing and snowboarding in New England" and providing discounts for a variety of goods and services related to such activities. The services in the cited registration are "providing information regarding travel to and from mountain resorts" and information regarding mountain sport activities and a variety of goods and services related to mountain sport activities. Clearly, the registrant's identified services encompass applicant's services. Both services provide

information and applicant's ski and snowboarding information is encompassed in registrant's information pertaining to mountain sport activities. As the Examining Attorney points out, the services in the cited registration are not geographically limited and would encompass information about such activities in New England. Thus, the fact that applicant's services are limited to information pertaining to New England does not distinguish the services.

Further, applicant's services of offering discounts for services related to skiing and snowboarding are closely related to registrant's information pertaining to "product reviews" and "mountain sport activities, food, restaurant and lodging choices."

Finally, while applicant's identified services are offered only via the Internet, the services in the cited registration are not limited to any particular trade channel or medium and encompass services offered via the Internet. Therefore, we conclude that applicant's identified services are legally identical, and closely related, to the services in the cited registration.

We turn, next, to a determination of whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a

side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entirety, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. *See In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

Applicant's mark begins with the phrase GOSKI, which is identical in its entirety to the registered mark. We agree with the Examining Attorney that the registered mark GOSKI is likely to be perceived as the two words "go ski"; that this phrase, in connection with registrant's identified services, is an exhortation to go skiing; and that the phrase has the same connotation in applicant's mark, i.e., the phrase "GOSKINEWENGLAND" is likely to be perceived as an exhortation to go skiing in New England. The term New

England merely describes the geographic scope of the skiing information offered on applicant's website.

Contrary to applicant's contention, the TLD, ".COM," in applicant's mark has no source-indicating function. See *In re Martin Container Inc.*, 65 USPQ2d 1058 (TTAB 2002) (the Board held the term CONTAINER.COM incapable of distinguishing applicant's services and hence unregistrable on the Supplemental Register); and *In re Eilberg*, 49 USPQ2d 1955 (TTAB 1998) (the Board held the term WWW.EILBERG.COM incapable of distinguishing applicant's services and hence unregistrable on the Supplemental Register).

Considered in its entirety, the commercial impression of applicant's mark, GOSKINEWENGLAND.COM, is sufficiently similar to the registered mark, GOSKI, that, the marks, in connection with the identified overlapping and related services, are likely to be perceived as indicating the same or related source or sponsorship. Therefore, we conclude that confusion as to the source or sponsorship of the respective services is likely.

Decision: The refusal under Section 2(d) of the Act is affirmed.